

**ANNUAL REPORT
OF THE
COMMISSION ON COURTS**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2009

INDIANA LEGISLATIVE COUNCIL

2009

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COMMISSION ON COURTS

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Mark Goodpaster
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 33-23-10 creating the Commission on Courts.

IC 33-23-10-7 charges the Commission with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one public hearing on each request presented to the Commission.
4. Review, report on, and make recommendations concerning any other matters relating to court administration that the Commission determines appropriate, including the following:
 - a. Court fees.
 - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - d. Jury selection.
 - e. Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
 - a. A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - b. If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - i. A draft of legislation implementing the changes.
 - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
 - iii. Summaries of any research supporting the recommended changes.
 - iv. Summaries of public hearings held concerning the recommended changes.

The Legislative Council directed the Commission to study the following topics:

1. The consolidation of probation services in counties having more than one probation department.
2. Methods of providing financial support to local probation departments.
3. Liability, statute of limitations, and statute of repose for asbestos related illnesses.

II. INTRODUCTION AND REASONS FOR STUDY

The legislative branch and the judicial branch are separate and co-equal branches of state government. The Commission on Courts was established to give the Indiana General Assembly adequate time to study legislative proposals that will affect the judicial branch.

III. SUMMARY OF WORK PROGRAM

The Commission met two times during the 2009 interim to study court-related issues.

At the first meeting on October 2, 2009, the Commission heard testimony on or discussed the following topics:

- *Probation, including consolidation of probation services in counties having more than one probation department and methods of providing financial support to local probation departments.
- *Liability, statute of limitations, and statute of repose for asbestos related illnesses.
- *Placement of children in out-of-state rehabilitation and treatment programs by juvenile court judges.

At the second meeting on October 15, 2009, the Commission heard testimony on or discussed the following topics:

- *Allowing former magistrates to serve as senior judges.
- *The Judicial Technology and Automation Committee and the automated record keeping fee.
- *Allen Circuit Court magistrate request.
- *Marion Superior Court request to convert commissioner positions to magistrates.

*Bartholomew County request to add a third judge to the Superior Court.

*Establishment of generic problem solving court statute to provide alternative treatment and rehabilitation programs in addition to drug and reentry courts.

IV. SUMMARY OF TESTIMONY

The Commission heard testimony from the following witnesses concerning the following topics:

Probation Issues

Andrew Berger, Legislative Director of the Association of Indiana Counties (AIC), said the AIC supports consolidation of probation services within counties to control costs and save counties money.

Jane Seigel, Executive Director of the Indiana Judicial Center, said the current probation system in which the state establishes probation standards while the counties were responsible for funding probation services caused considerable "tension." Ms. Seigel suggested if the state funded probation services it could solve several current problems.

Judge Mark Stoner of the Marion Superior Court and Chairperson of the State Probation Committee of the Indiana Judicial Conference stated few counties currently had split probation departments and he was not certain legislative action was needed to address the issue. He said he also felt that if there were any outstanding probation related issues, it would be best to handle them through judicial rather than legislative action.

Don Travis, Chief Probation Officer from Howard County and President of the Probation Officers Professional Association of Indiana, stated there was a "vast difference" between juvenile and adult probation services which can make consolidation difficult.

Judge Peter Nemeth of the St. Joseph Probate Court stated that juvenile and adult probation systems should not be consolidated.

Placement of Juveniles in Out-Of-State Rehabilitation and Treatment Programs by Juvenile Court Judges

Judge James Payne, Director of the Indiana Department of Child Services (DCS), stated there was tremendous capacity in the state to keep every child who needs a treatment program in Indiana. Judge Payne stated that, even with recent legislation that went into effect July 1, 2009, a juvenile judge may still place a juvenile in an out-of-state program, but the county in which the judge has jurisdiction must pay the expenses of the placement if the DCS finds there were programs in Indiana that could have served the juvenile.

Judge Loretta Rush of the Tippecanoe Superior Court said she disagreed with Judge Payne concerning who should have the final say in the out-of-state placement of juveniles. She said it was a step backwards for the juvenile justice system to take this placement discretion away from judges and give it to a state executive branch agency.

Judge Nemeth stated that executive branch review of cases involving out-of-state placement of juveniles was a "charade" and created a separation of powers issue under the Indiana Constitution.

Judge Mary Beth Bonaventura of the Lake Superior Court questioned why placement of juveniles in programs out-of-state was now treated differently than placement of juveniles in programs in Indiana.

Liability for Asbestos Related Illnesses

Russell Sipes, an attorney with the law firm of George & Sipes, LLC, stated an Indiana Supreme Court decision in 2003 had made the statute concerning product liability actions based on exposure to asbestos virtually "meaningless." He said exposure to asbestos causes mesothelioma and other diseases that take decades to develop and, under current Indiana statutes, the time for persons in Indiana to bring a claim of any kind ends long before these diseases even start to show symptoms.

Mr. Sipes stated the issue was about people being killed and having a right to find out if someone is responsible for their deaths. He said if people are responsible, they should not escape liability just because enough time has passed. He said the current system is not just or fair and is not good public policy.

Sen. John Waterman said he had not been diagnosed with mesothelioma but had been diagnosed with fibrosis, which he considered a "ticking time bomb." He said these issues needed further discussion.

Dorothy Kuykendall from West Terre Haute, Indiana, stated in April 2009 she was diagnosed with mesothelioma even though the last time she handled any asbestos was in 1975. She stated she cannot get workers compensation and she cannot sue anyone under Indiana law.

Sharon Wilson from Greenwood, Indiana, stated her husband, James Wilson, died in April 2008 from mesothelioma. She asked the Commission to let people like her husband have a chance to find out if someone is responsible for their illnesses.

Tony Peyton, a retired construction worker, said he had contracted mesothelioma as a result of asbestos exposure during his construction career. He said Indiana workers should have the same rights and remedies that workers in neighboring states have concerning asbestos related illnesses.

Dr. David Mares from Anderson, Indiana, stated the latency period after an asbestos related injury occurs could be 50 to 70 years. Dr. Mares stated there were very few other causes for mesothelioma other than asbestos.

Nancy Guyott, Executive Director and Counsel for the Indiana AFL-CIO, said she favored extending the statute of repose for these types of latent diseases. She stated Indiana workers should have the opportunity to exercise the same rights and remedies workers in border states have.

Written testimony entitled "Changes to Indiana's Statutes of Repose Would Harm Indiana Business" was submitted to Commission members by the Indiana Manufacturers Association, the Indiana Chamber of Commerce, the Associated Builders and Contractors, Inc., the National Federation of Independent Business-Indiana, the Indiana Energy Association, the Indiana Petroleum Council, and the Insurance Institute of Indiana.

Senior Judges

Chief Justice Randall Shepard of the Indiana Supreme Court stated he would like the General Assembly to add retired magistrates to the group of persons eligible to serve as senior judges to provide additional help with increasing caseloads in Indiana trial courts. He stated money paid to senior judges came out of funds already appropriated to the Supreme Court for judicial payroll.

Judicial Technology and Automation Committee (JTAC) and the Automated Record Keeping Fee

Justice Frank Sullivan of the Indiana Supreme Court stated that in 2008 the Commission recommended increasing the automated record keeping fee from \$7 to \$10 for a four year period. He asked the Commission to make the same endorsement this year. He stated the additional revenue the increase would generate would allow JTAC to be more aggressive in installing the Odyssey case management system in those counties that do not have it. He said it would also help JTAC implement other projects the General Assembly had given to JTAC for which JTAC had not received additional funding. Justice Sullivan stated that, with the fee increase, Odyssey could be installed in those counties on the JTAC "waiting list" in two years and in all counties in not more than five years.

Peggy Mayfield, Morgan County Clerk, stated counties did not receive any of the automated record keeping fee. She said counties sent millions of dollars to the state to implement the Odyssey case management system whether or not they were on the Odyssey system. She stated she would like to see some of this fee diverted to the counties to help make record keeping more efficient.

Beverly Elliot, LaGrange County Clerk, stated LaGrange County had to install a new system in 2005 after the JTAC case management system project stalled. She said installing Odyssey in

LaGrange County would be a "backwards step." She asked that some of the automated record keeping fee be diverted to counties to allow them to maintain their current systems.

Candy Meyers, Noble County Clerk, said the implementation of the JTAC system was ultimately about accountability to both taxpayers and litigants concerning where all the money is going. She said her data management system does everything the state requires and is better than the Odyssey system.

Allen Circuit Court Magistrate

Judge Thomas Felts of the Allen Circuit Court stated the Commission had approved his request last year to replace his county paid hearing officer with a state paid magistrate. He said that provision was not enacted during the 2009 Session and he asked the Commission to approve the request again this year.

Judge Felts said this hearing officer performed Title IV-D child support services which meant two-thirds of their salary was paid by the federal government. He stated Allen County paid the hearing officer approximately \$40,000 a year. He said since the idea was to have the magistrate perform these same Title IV-D services, only this amount would be passed on to the state as part of the new magistrate's salary.

Marion Superior Court Magistrates

Rep. Cherrish Pryor of Indianapolis requested that the Commission endorse legislation to convert the Marion Superior Court commissioners to magistrates. She stated she believed this conversion would be "revenue neutral."

Judge Heather Welch of the Marion Superior Court stated commissioners and magistrates perform the same duties, but the salary of a commissioner was paid by a county while the salary of a magistrate was paid by the state. She stated only 67% of the judicial officers in Marion County were funded by the state while 71% were funded by the state in Lake County, 88% in Allen County, and 100% in St. Joseph County. She stated Marion County was not asking for more judicial officers but only to convert existing commissioner positions to magistrates.

Judge Timothy Oakes of the Marion Superior Court said it was recently determined that a \$35 fine imposed by the Marion County courts that was being deposited in the county general fund should be deposited in the state general fund instead. He stated this fine could be used to offset the cost to the state to pay for new magistrate positions in Marion County. Judge Oakes said the amount of revenue from this fine now being deposited by Marion County in the state general fund could offset the cost of adding 19 to 22 magistrate positions in Marion County.

Bartholomew Superior Court Judge

Judge Stephen Heimann of the Bartholomew Circuit Court stated Bartholomew County was requesting a third superior court judge. He stated they were asking for this judgeship to begin July 1, 2011, so there would not be any immediate impact on the state budget. He said recent weighted caseload measurements indicated Bartholomew County needs 7.1 judicial officers but only had 5.2. Judge Heimann also stated Bartholomew County had implemented many local programs that resulted in fewer adult and juvenile offenders being sent to the Department of Correction, thus saving the state money.

Problem Solving Courts

Judge John Surbeck of the Allen Superior Court and Chairperson of the Problem Solving Courts Committee of the Indiana Judicial Center (Committee) said the goal of the Committee was to encourage the broad integration of the problem solving philosophy into the administration of justice to improve court processes and outcomes while preserving the rule of law.

Judge Surbeck said the General Assembly had previously enacted legislation to formalize drug courts and reentry courts. He said the Committee was now asking the Commission to endorse new legislation that would consolidate those courts along with other problem solving court initiatives into a general problem solving courts statute.

Judge Dennis Carroll of the Madison Superior Court stated he felt there needed to be some statutory framework that established a system of standards for problem solving courts other than the drug and reentry courts.

Mary Kay Hudson, the Indiana Judicial Center Problem Solving Courts Administrator, stated any user fees imposed by problem solving courts would have to be approved by the Board of Directors of the Indiana Judicial Conference. Ms. Hudson stated problem solving court judges could review the ability of persons to pay user fees and would have the flexibility to waive fees.

V. COMMISSION RECOMMENDATIONS

The Commission made the following recommendations:

1. The Commission recommended that legislation be enacted to amend the senior judge statutes to allow magistrates to serve as senior judges. (Approved 11 to 0 by voice vote.)
2. The Commission recommended that legislation be enacted to increase the automated record keeping fee from \$7 to \$10 from July 1, 2010, to July 1, 2014, and then to decrease the fee to \$7 after June 30, 2014. (Approved 9 to 1 by show of hands.)
3. The Commission recommended that, subject to the availability of state funds, legislation be enacted to eliminate the hearing officer position appointed by the judge of the Allen Circuit Court and instead allow the judge to appoint a second magistrate. (Approved 10 to 0 by show of

hands.)

4. The Commission recommended that, subject to the availability of state funds, legislation be enacted to allow Marion County to convert commissioner positions to magistrate positions. (Approved 10 to 0 by show of hands.)

5. The Commission recommended that, subject to the availability of state funds, legislation be enacted to add a third judge to the Bartholomew Superior Court beginning July 1, 2011. (Approved 10 to 0 by show of hands.)

6. The Commission recommended that legislation be enacted to consolidate existing statutes concerning the establishment of drug courts and reentry courts into a generic statute that allows the establishment of additional problem solving courts that operate under the oversight of the Judicial Conference of Indiana. (Approved 11 to 0 by show of hands.)

7. The Commission recommended that the ongoing consolidation of probation services should continue to be left to the discretion of the Indiana Judicial Conference. (Approved 11 to 0 by voice vote.)

8. The Commission recommended that legislation be enacted to repeal provisions established in HEA 1001-2009(ss) relevant to the out-of-state placement of juveniles by trial courts and to instead restore the juvenile placement expedited review process established by HEA 1001-2008 (the so called "rocket docket"). (Approved 9 to 1, with 1 abstention, by show of hands.)

*The Commission decided to not make any recommendations concerning issues involving asbestos related illnesses.

WITNESS LIST

October 2, 2009, Meeting

Andrew Berger, Legislative Director, Association of Indiana Counties
Judge Mary Beth Bonaventura, Lake Superior Court
Nancy Guyott, Executive Director and Counsel, Indiana AFL-CIO
Dorothy Kuykendall, West Terre Haute, Indiana
Dr. David Mares, Anderson, Indiana
Judge Peter Nemeth, St. Joseph Probate Court
Judge James Payne, Director, Indiana Department of Child Services
Tony Peyton
Judge Loretta Rush, Tippecanoe Superior Court
Jane Seigel, Executive Director, Indiana Judicial Center
Russell Sipes, Attorney, George & Sipes, LLC
Judge Mark Stoner, Marion Superior Court, Chairperson of the State Probation
Committee of the Indiana Judicial Conference
Don Travis, Chief Probation Officer, Howard County, President of the Probation Officers
Professional Association of Indiana
Sen. John Waterman, Shelburn, Indiana
Sharon Wilson, Greenwood, Indiana

October 15, 2009, Meeting

Judge Dennis Carroll, Madison Superior Court
Beverly Elliot, LaGrange County Clerk
Judge Thomas Felts, Allen Circuit Court
Judge Stephen Heimann, Batholomew Circuit Court
Mary Kay Hudson, Administrator, Indiana Judicial Center Problem Solving Courts
Peggy Mayfield, Morgan County Clerk
Candy Meyers, Noble County Clerk
Judge Timothy Oakes, Marion Superior Court
Rep. Cherrish Pryor, Indianapolis, Indiana
Chief Justice Randall Shepard, Indiana Supreme Court
Justice Frank Sullivan, Indiana Supreme Court
Judge John Surbeck, Allen Superior Court, Chairperson of the Problem Solving Courts
Committee of the Indiana Judicial Center
Judge Heather Welch, Marion Superior Court